

**NOTICE OF PROPOSED RULEMAKING**  
**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**PREAMBLE**

<u><b>1.</b></u>	<u><b>Sections Affected</b></u>	<u><b>Rulemaking Action</b></u>
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Article 10	New Article
R12-4-1001	New Section
R12-4-1002	New Section
R12-4-1003	New Section
R12-4-1004	New Section

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 28-1175(B) and 28-1179(C)(1)

**3. List of all previous notices appearing in the Register addressing the proposed rules:**

## Notice of Rulemaking Docket Opening:

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Joe Sacco  
Address: Arizona Game & Fish Department  
5000 West Carefree Highway  
Phoenix, AZ 85086  
Telephone: (623) 236-7931  
Fax: (623) 236-7945  
E-mail: [jsacco@azgfd.gov](mailto:jsacco@azgfd.gov)

**5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

In its 2008 session, the legislature amended A.R.S. § 28-1175(B) to authorize the Director of the Game and Fish Department to determine a reasonable fee that the provider of an approved educational course of instruction in off-highway vehicle safety and environmental ethics may collect from a participant in the course. The Commission is placing in rule the fee determined by the Director.

The change to A.R.S. § 28-1175(B) also specified that the Department may conduct or approve an educational course of instruction in off-highway vehicle safety and environmental ethics. This rulemaking specifies the minimum standards for a course to be approved and the procedure for obtaining approval of the course from the Department.

A new provision, A.R.S. § 28-1179, authorized the Commission to make rules implementing off-highway vehicle equipment requirements. The Commission is making a rule to implement the sound-level requirement specified in statute.

**6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The rulemaking will have an economic impact on the provider of an educational course of instruction that is approved by the Department. A course provider is not required to have the course approved by the Department. However, there is an economic advantage to obtaining Departmental approval because under A.R.S. § 28-1174(G), a judge may require a person who violates the statute to take an approved course. The provider of an approved course may also charge the course fee established in this rulemaking. Because of the course fee, the rulemaking will have economic impact on those who participate in an approved course, either voluntarily or under court order.

In determining the maximum fee that the provider of an approved educational course of instruction in off-highway vehicle safety and environmental ethics may charge, the Director reviewed fees currently charged for related courses. For example, the Motorcycle Safety Foundation currently charges \$195 for dirt bike training. The ATV Safety Institute charges \$125. The Director set the maximum fee at an amount believed to be consistent with fees currently charged, allowing for market competition among providers and enabling providers to increase the fee over time.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Joe Sacco  
Address: Arizona Game & Fish Department  
5000 West Carefree Highway  
Phoenix, AZ 85086  
Telephone: (623) 236-7931  
Fax: (623) 236-7945  
E-mail: jsacco@azgfd.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: Friday, December 5, 2008  
Time: 8:00 a.m. to 5:00 p.m.  
Location: Francisco Grande Hotel  
26000 W. Gila Bend Highway  
Casa Grande, AZ 85293

The rulemaking record will close at 5:00 p.m. on December 5, 2008.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 10. OFF-HIGHWAY VEHICLES**

Section

- R12-4-1001.    Minimum Standards for an Approved Educational Course
- R12-4-1002.    Course-approval Procedure
- R12-4-1003.    Fee for an Approved Course
- R12-4-1004.    Off-highway Vehicle Sound-level Requirements

## **ARTICLE 10. OFF-HIGHWAY VEHICLES**

### **R12-4-1001. Minimum Standards for an Approved Educational Course**

The Department shall approve an educational course of instruction in off-highway vehicle safety and environmental ethics only if the course meets the following minimum standards:

1. Course content. The course provides information regarding:
  - a. Use of an off-highway vehicle in a manner that minimizes air pollution;
  - b. Use of an off-highway vehicle in a manner that does not harm the natural terrain, plants, or animals;
  - c. Off-highway vehicle safety;
  - d. Responsibilities of users of off-highway vehicles; and
  - e. Statutes and rules regarding use of off-highway vehicles including A.R.S. §§ 28-1174, 28-1177, and 28-1179; and
2. Course procedures. The course provider shall:
  - a. Use a written examination to measure the extent to which a participant learned the course content; and
  - b. Provide a certificate of completion to a participant who receives a score of 75% or above on the written examination or that demonstrates an equivalent proficiency.

### **R12-4-1002. Course-approval Procedure**

- A. To obtain approval of an educational course of instruction in off-highway vehicle safety and environmental ethics, the course provider shall submit an application to the Department using a form that is available from the Department. The provider shall include the following information on the application form:
  1. Name of provider;
  2. If the provider is not an individual, name of the individual who will maintain contact with the Department;
  3. Business address; and
  4. Business and contact telephone numbers and fax number.
- B. In addition to the application form required under subsection (A), a provider shall include a copy of the following:
  1. The curriculum that will be used to provide the educational course;

2. Any materials that will be provided to course participants;
  3. The written examination required under R12-4-1001(2)(a); and
  4. The certificate of completion required under R12-4-1001(2)(b).
- C.** Within 60 days after receiving the materials listed in subsections (A) and (B), the Department shall provide written notice to the provider about whether the educational course of instruction in off-highway vehicle safety and environmental ethics is approved or disapproved.
- D.** The provider of an educational course of instruction that is not approved by the Department may appeal the decision under A.R.S. Title 41, Chapter 6, Article 10.

**R12-4-1003. Fee for an Approved Course**

Under A.R.S. § 28-1175(B), the provider of an approved educational course of instruction in off-highway vehicle safety and environmental ethics may collect a fee from each participant that:

1. Is reasonable and commensurate for the course, and
2. Does not exceed \$250.

**R12-4-1004. Off-highway Vehicle Sound-level Requirements**

- A.** A peace officer who has reason to believe that an off-highway vehicle is being operated in violation of A.R.S. § 28-1179(A)(3) may direct the operator to submit the off-highway vehicle to an onsite test to measure the vehicle's noise level.
- B.** If a peace officer directs the operator of an off-highway vehicle to submit the vehicle to an onsite test to measure the vehicle's noise level, the operator shall allow the off-highway vehicle and associated equipment to be tested. If the peace officer believes that multiple tests of the off-highway vehicle's noise level are necessary to ensure that an accurate measure is obtained, the operator shall allow multiple tests.
- C.** If it is determined that an off-highway vehicle is being operated in violation of A.R.S. § 28-1179(A), the operator of the off-highway vehicle shall:
1. Immediately stop operating the vehicle; and
  2. Ensure that the vehicle is not operated again until it can be operated in compliance with A.R.S. § 28-1179(A).